

# Union Calendar No. 229

110TH CONGRESS  
1ST SESSION

# H. R. 2102

[Report No. 110-370]

To maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2007

Mr. BOUCHER (for himself, Mr. PENCE, Mr. CONYERS, Mr. COBLE, Mr. YARMUTH, and Mr. WALDEN of Oregon) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 10, 2007

Additional sponsors: Mr. FLAKE, Mr. FORTUÑO, Mr. SHAYS, Mr. UDALL of New Mexico, Ms. JACKSON-LEE of Texas, Mr. COHEN, Mr. POE, Ms. BERKLEY, Mr. EMANUEL, Mr. MACK, Mr. TOWNS, Mr. LARSON of Connecticut, Ms. DELAURO, Mr. GONZALEZ, Ms. BALDWIN, Ms. ESHOO, Mrs. CAPPS, Ms. CASTOR, Mr. RADANOVICH, Mr. PUTNAM, Mr. McCOTTER, Mr. BLUMENAUER, Mr. UPTON, Mr. FERGUSON, Mr. WALSH of New York, Mr. REYNOLDS, Ms. ZOE LOFGREN of California, Mr. GENE GREEN of Texas, Mr. GUTIERREZ, Mr. COURTNEY, Mr. WALBERG, Mr. RUPPERSBERGER, Mr. KENNEDY, Mr. MURPHY of Connecticut, Mr. LAMPSON, Mr. MEEKS of New York, Mr. ROTHMAN, Mr. BUTTERFIELD, Mr. ORTIZ, Mr. DELAHUNT, Mr. PALLONE, Mr. AL GREEN of Texas, Mr. HASTINGS of Florida, Mr. DICKS, Ms. NORTON, Mr. WEXLER, Mr. McCAUL of Texas, Mr. RYAN of Wisconsin, Mr. PAYNE, Mr. WOLF, Ms. SCHAKOWSKY, Mrs. NAPOLITANO, Ms. FALLIN, Mr. ENGLISH of Pennsylvania, Mr. DOYLE, Ms. WASSERMAN SCHULTZ, Mr. GARRETT of New Jersey, Mr. CARNAHAN, Mr. LEWIS of Kentucky, Mr. PLATTS, Mr. CUMMINGS, Ms. WATSON, Mr. COOPER, Mr. KUHL of New York, Mr. WU, and Mr. BLUNT

OCTOBER 10, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 2, 2007]

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## A BILL

To maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       *This Act may be cited as the “Free Flow of Informa-*  
 5       *tion Act of 2007”.*

6       **SEC. 2. COMPELLED DISCLOSURE FROM COVERED PER-**  
 7               **SONS.**

8       (a) *CONDITIONS FOR COMPELLED DISCLOSURE.—In*  
 9       *any matter arising under Federal law, a Federal entity*  
 10       *may not compel a covered person to provide testimony or*  
 11       *produce any document related to information obtained or*  
 12       *created by such covered person as part of engaging in jour-*  
 13       *nalism, unless a court determines by a preponderance of*  
 14       *the evidence, after providing notice and an opportunity to*  
 15       *be heard to such covered person—*

16               (1) *that the party seeking to compel production*  
 17       *of such testimony or document has exhausted all rea-*

1        *sonable alternative sources (other than the covered*  
2        *person) of the testimony or document;*

3            *(2) that—*

4                    *(A) in a criminal investigation or prosecu-*  
5                    *tion, based on information obtained from a per-*  
6                    *son other than the covered person—*

7                            *(i) there are reasonable grounds to be-*  
8                            *lieve that a crime has occurred; and*

9                            *(ii) the testimony or document sought*  
10                          *is critical to the investigation or prosecu-*  
11                          *tion or to the defense against the prosecu-*  
12                          *tion; or*

13                          *(B) in a matter other than a criminal in-*  
14                          *vestigation or prosecution, based on information*  
15                          *obtained from a person other than the covered*  
16                          *person, the testimony or document sought is crit-*  
17                          *ical to the successful completion of the matter;*

18            *(3) in the case that the testimony or document*  
19            *sought could reveal the identity of a source of infor-*  
20            *mation or include any information that could reason-*  
21            *ably be expected to lead to the discovery of the iden-*  
22            *tity of such a source, that—*

23                          *(A) disclosure of the identity of such a*  
24                          *source is necessary to prevent an act of terrorism*  
25                          *against the United States or its allies or other*

1       *significant and specified harm to national secu-*  
2       *rity with the objective to prevent such harm;*

3               *(B) disclosure of the identity of such a*  
4       *source is necessary to prevent imminent death or*  
5       *significant bodily harm with the objective to pre-*  
6       *vent such death or harm, respectively; or*

7               *(C) disclosure of the identity of such a*  
8       *source is necessary to identify a person who has*  
9       *disclosed—*

10               *(i) a trade secret, actionable under sec-*  
11       *tion 1831 or 1832 of title 18, United States*  
12       *Code;*

13               *(ii) individually identifiable health in-*  
14       *formation, as such term is defined in sec-*  
15       *tion 1171(6) of the Social Security Act (42*  
16       *U.S.C. 1320d(6)), actionable under Federal*  
17       *law; or*

18               *(iii) nonpublic personal information,*  
19       *as such term is defined in section 509(4) of*  
20       *the Gramm-Leach-Bliley Act (15 U.S.C.*  
21       *6809(4)), of any consumer actionable under*  
22       *Federal law; and*

23       *(4) that the public interest in compelling disclo-*  
24       *sure of the information or document involved out-*

1        *weighs the public interest in gathering or dissemi-*  
 2        *nating news or information.*

3        *(b) LIMITATIONS ON CONTENT OF INFORMATION.—The*  
 4        *content of any testimony or document that is compelled*  
 5        *under subsection (a) shall—*

6                *(1) not be overbroad, unreasonable, or oppressive*  
 7        *and, as appropriate, be limited to the purpose of*  
 8        *verifying published information or describing any*  
 9        *surrounding circumstances relevant to the accuracy of*  
 10        *such published information; and*

11                *(2) be narrowly tailored in subject matter and*  
 12        *period of time covered so as to avoid compelling pro-*  
 13        *duction of peripheral, nonessential, or speculative in-*  
 14        *formation.*

15        *(c) RULE OF CONSTRUCTION.—Nothing in this Act*  
 16        *shall be construed as applying to civil defamation, slander,*  
 17        *or libel claims or defenses under State law, regardless of*  
 18        *whether or not such claims or defenses, respectively, are*  
 19        *raised in a State or Federal court.*

20        **SEC. 3. COMPELLED DISCLOSURE FROM COMMUNICATIONS**  
 21                **SERVICE PROVIDERS.**

22        *(a) CONDITIONS FOR COMPELLED DISCLOSURE.—*  
 23        *With respect to testimony or any document consisting of*  
 24        *any record, information, or other communication that re-*  
 25        *lates to a business transaction between a communications*

1 service provider and a covered person, section 2 shall apply  
 2 to such testimony or document if sought from the commu-  
 3 nications service provider in the same manner that such  
 4 section applies to any testimony or document sought from  
 5 a covered person.

6 (b) NOTICE AND OPPORTUNITY PROVIDED TO COV-  
 7 ERED PERSONS.—A court may compel the testimony or dis-  
 8 closure of a document under this section only after the party  
 9 seeking such a document provides the covered person who  
 10 is a party to the business transaction described in sub-  
 11 section (a)—

12 (1) notice of the subpoena or other compulsory  
 13 request for such testimony or disclosure from the com-  
 14 munications service provider not later than the time  
 15 at which such subpoena or request is issued to the  
 16 communications service provider; and

17 (2) an opportunity to be heard before the court  
 18 before the time at which the testimony or disclosure  
 19 is compelled.

20 (c) EXCEPTION TO NOTICE REQUIREMENT.—Notice  
 21 under subsection (b)(1) may be delayed only if the court  
 22 involved determines by clear and convincing evidence that  
 23 such notice would pose a substantial threat to the integrity  
 24 of a criminal investigation.

1 **SEC. 4. DEFINITIONS.**

2 *In this Act:*

3 (1) *COMMUNICATIONS SERVICE PROVIDER.*—The  
4 term “communications service provider”—

5 (A) *means any person that transmits infor-*  
6 *mation of the customer’s choosing by electronic*  
7 *means; and*

8 (B) *includes a telecommunications carrier,*  
9 *an information service provider, an interactive*  
10 *computer service provider, and an information*  
11 *content provider (as such terms are defined in*  
12 *sections 3 and 230 of the Communications Act of*  
13 *1934 (47 U.S.C. 153, 230)).*

14 (2) *COVERED PERSON.*—The term “covered per-  
15 son” *means a person who, for financial gain or liveli-*  
16 *hood, is engaged in journalism and includes a super-*  
17 *visor, employer, parent, subsidiary, or affiliate of*  
18 *such covered person. Such term shall not include—*

19 (A) *any person who is a foreign power or*  
20 *an agent of a foreign power, as such terms are*  
21 *defined in section 101 of the Foreign Intelligence*  
22 *Surveillance Act of 1978 (50 U.S.C. 1801); or*

23 (B) *any organization designated by the Sec-*  
24 *retary of State as a foreign terrorist organiza-*  
25 *tion in accordance with section 219 of the Immigra-*  
26 *tion and Nationality Act (8 U.S.C. 1189).*

1           (3) *DOCUMENT.*—*The term “document” means*  
2           *writings, recordings, and photographs, as those terms*  
3           *are defined by Federal Rule of Evidence 1001 (28*  
4           *U.S.C. App.).*

5           (4) *FEDERAL ENTITY.*—*The term “Federal enti-*  
6           *ty” means an entity or employee of the judicial or ex-*  
7           *ecutive branch or an administrative agency of the*  
8           *Federal Government with the power to issue a sub-*  
9           *poena or issue other compulsory process.*

10          (5) *JOURNALISM.*—*The term “journalism”*  
11          *means the gathering, preparing, collecting,*  
12          *photographing, recording, writing, editing, reporting,*  
13          *or publishing of news or information that concerns*  
14          *local, national, or international events or other mat-*  
15          *ters of public interest for dissemination to the public.*





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